

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN EPPS,

Plaintiff,

No. CIV S-04-2014 LKK DAD P

vs.

K. MENDOZA POWERS, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On April 25, 2005, the court dismissed plaintiff's complaint and granted him leave to file an amended complaint. Before the court is plaintiff's amended complaint filed on May 18, 2005.¹

Plaintiff's amended complaint suffers from the same defects as his original complaint and fails to state a cognizable claim. Plaintiff was advised that an amended complaint would supersede his original complaint; therefore, an amended complaint must be complete in

¹ In the court's order filed April 25, 2005, plaintiff was instructed that any amended complaint filed in this action was to be labeled "Amended Complaint." (Order at 5.) Plaintiff did not heed the court's instructions with respect to the face page of the document filed on May 18, 2005. Nonetheless, the court will refer to that document as plaintiff's "Amended Complaint."

1 itself without reference to any prior pleading. In his amended complaint, plaintiff again refers to
 2 an April 19, 2004 report prepared by defendant correctional officer Hogan.² The report concerns
 3 an investigation pursuant to which Officer Hogan concluded that plaintiff had provided false
 4 information conspired with a female citizen to have her impersonate a District Attorney
 5 investigator to assist plaintiff in obtaining a transfer to the California Medical Facility. However,
 6 plaintiff's form amended complaint fails to identify his constitutional claims and does not set
 7 forth any factual allegations in support thereof. Instead, in his "Statement of Claim" plaintiff
 8 simply refers to his "Amended Complaint (attached pages)." (Am. Compl. at 8.) In those
 9 attached pages and under the heading "Statement of Claim" plaintiff simply refers to specific
 10 paragraphs of defendant Hogan's report and responds to each, arguing that the statements in
 11 those specific paragraphs are untrue. (Am. Compl. at 10-20.)³ For example, plaintiff alleges as
 12 follows:

13 Response to Interview of Inmate Epps 3-15-04 0945

14 Paragraph (1) Inmate Epps totally denies statements, giving [sic]
 15 false information to C/O Hogan.

16 Paragraph (2) Plaintiff would ask the court and U.S. Attorneys to
 17 please review the 43 page statement given to Sacramento Sheriff
 Deputy Bakarich and Sheriff Deputy Martinez (dated April 2001).

18 (Id., Attach. at 10.) Plaintiff also asks the court to conduct a federal investigation into the
 19 matter. (Am. Compl. at 8.)

20 It would appear that in April of 2004 Correctional Officer Hogan was assigned to
 21 investigate plaintiff's expressed safety concerns involving threats from other inmates and his
 22 related request for a transfer to the California Medical Facility. During that investigation

23 ² The report referred to by plaintiff is not attached to his amended complaint but was
 24 submitted as Exhibit A to his original complaint filed April 25, 2005.

25 ³ The pages attached to the amended complaint are not numbered by plaintiff but will be
 26 referred to herein as if sequentially numbered in order following the eight numbered pages of the
 amended complaint.

1 plaintiff referred Officer Hogan to an investigator with the Sacramento County District
2 Attorney's Office with respect to his expressed safety concerns and gave Officer Hogan the
3 investigator's telephone number. Officer Hogan contacted the person at the number given to him
4 by plaintiff and that individual acted as if they were a District Attorney's Office investigator and
5 confirmed the account given by plaintiff to Officer Hogan. Upon further investigation Officer
6 Hogan discovered that the individual he had spoken to was not a D.A.'s investigator but rather
7 was impersonating one apparently at plaintiff's behest. When Officer Hogan reached the actual
8 investigator whose name plaintiff had referred to, that investigator repudiated the account
9 plaintiff had given Officer Hogan. Accordingly, in his report dated April 19, 2004, Officer
10 Hogan concluded that plaintiff should receive a rule violation report charging him with providing
11 false information and conspiring with a citizen to impersonate a District Attorney's Office
12 investigator so as to obstruct Hogan's investigation. In the various documents filed with this
13 court plaintiff has made it clear that he disagrees with the statements and conclusions reflected in
14 Officer Hogan's report. However, plaintiff has now failed twice to state any cognizable claim in
15 this regard.

16 In his amended complaint plaintiff names seven defendants. Plaintiff has been
17 previously advised by the court that he must provide specific allegations for each of the named
18 defendants but has failed to do so in his amended complaint.

19 In addition, plaintiff has added two new defendants in his amended complaint,
20 California Department of Corrections Director Janet Woodford and Sacramento County District
21 Attorney Jan Scully. Supervisory personnel are generally not liable under § 1983 for the actions
22 of their employees under a theory of respondeat superior and, therefore, when a named defendant
23 holds a supervisory position, the causal link between him and the claimed constitutional
24 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
25 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
26 concerning the involvement of official personnel in civil rights violations are not sufficient. See

1 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Here, plaintiff has not provided any
2 specific factual allegations concerning either of these two supervisorial defendants. In addition,
3 prosecutors are absolutely immune from civil suits for damages under § 1983 which challenge
4 activities related to the initiation and presentation of criminal prosecutions. Imbler v. Pachtman,
5 424 U.S. 409 (1976).

6 To the extent that defendant Hogan's report resulted in disciplinary action against
7 plaintiff causing him the loss of time credits, or to suffer a criminal conviction, this action would
8 be premature.⁴ See Heck v. Humphrey, 512 U.S. 477, 486 (1994) (holding that a suit for
9 damages on a § 1983 civil rights claim cannot be maintained absent proof that the conviction or
10 sentence has been reversed, expunged, or declared invalid by a state tribunal authorized to make
11 such determination) and Edwards v. Balisok, 520 U.S. 641, 647-48 (1997) (holding that Heck
12 applies to challenges involving prison disciplinary actions).

13 Given the numerous fatal deficiencies discussed above and in the court's order
14 filed April 25, 2005, it appears clear that plaintiff cannot cure those defects and that granting
15 further leave to amend would be futile. See Reddy v. Litton Industries, Inc., 912 F.2d 291, 296
16 (9th Cir. 1990); Rutman Wine Co. v. E. & J. Gallo Winery, 829 F.2d 729, 738 (9th Cir. 1987).
17 Accordingly, it will be recommended that this action be dismissed with prejudice.

18 Plaintiff has requested the appointment of counsel. The United States Supreme
19 Court has ruled that district courts lack authority to require counsel to represent indigent
20 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
21 certain exceptional circumstances, the court may request the voluntary assistance of counsel
22 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
23 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court

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26 ⁴ Plaintiff makes no such allegation in his amended complaint.

1 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
2 counsel will therefore be denied.

3 Accordingly, IT IS HEREBY ORDERED that plaintiff's February 15, 2006
4 motion for the appointment of counsel is denied.

5 Also, IT IS HEREBY RECOMMENDED that this action be dismissed due to
6 plaintiff's failure to state a cognizable claim.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
9 days after being served with these findings and recommendations, plaintiff may file written
10 objections with the court. Such a document should be captioned "Objections to Magistrate
11 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
12 within the specified time may waive the right to appeal the District Court's order. Martinez v.
13 Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: April 11, 2006.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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